

John B. Kim,)	
)	Court of Appeals No. A-13372
Petitioner,)	
v.)	
)	Order
State of Alaska,)	
)	
Respondent.)	Date of Notice: 2/28/2019
)	

Trial Court Case # **1JU-18-00238CR**

By the time the district court responded to Kim’s motion to dismiss, Kim had been in custody for 300 days. The district court judge denied the motion to dismiss, and instead issued a new 90-day commitment order. In its denial of Kim’s motion to dismiss, the court ordered that Kim be released from custody if he was not restored to competency by March 18, 2019 — *i.e.*, 365 days from his original arrest.

Kim filed an emergency petition for review to this Court, seeking reversal of the district court's order denying his motion to dismiss. Kim argued that his continued detention violated his substantive due process rights under the state and federal constitutions.¹

Immediately after Kim filed this petition, the State dismissed the misdemeanor charge without prejudice and instituted civil commitment proceedings against Kim. This is the second time that the State has taken such action in this type of case. *See Lofrano v. State*, A-13220.

The State argues that its dismissal of Kim's charge renders his petition moot. Kim argues that we should hear this case under the public exception to the mootness doctrine. Kim also notes that his case "presents to this court the second instance of line assistant district attorneys refusing to dismiss a case when an incompetent defendant's admission to API is unreasonably delayed, only for the division director to dismiss the charges once the defendant petitions this court for review."

We agree with Kim that the significant issues raised by his petition justify overriding the mootness doctrine. Kim's case demonstrates that guidance is clearly needed on the important due process issues at stake with these types of delays.

Accordingly, IT IS ORDERED:

1. The petition for review is GRANTED.
2. *Transcripts*. Within 10 days, the Petitioner shall designate a transcript pursuant to Appellate Rule 210(b). Within 10 days following the Petitioner's designation, the Respondent may designate additional portions of the proceedings to be transcribed. Transcripts shall be prepared within 30 days of completed designations.
3. *Trial Court File*. The Notice of Completion of Preparation of File is due from the trial court on or before **04/09/2019**.

¹ U.S. Const. amend. XIV; Alaska Const. art. I, § 7.

4. *Briefing*. After the record is certified, the Petitioner shall have 30 days to file an opening brief conforming to Appellate Rule 212. Upon the filing of the Petitioner's brief, the Respondent shall have 30 days to file a brief. The deadlines for these two briefs may not be extended except upon a showing of good cause. After the Respondent's brief is filed, the Petitioner shall have 20 days to file any reply brief.

5. *Oral Argument*. Either party may request oral argument under Appellate Rule 505(a)(3).

6. In addition to any legal authority the parties may wish to address, the parties shall discuss the relevant time frames set out by statute and any applicable legislative history. Additionally, based on its review of the petition and its independent research, the Court has identified, and the parties shall address, the following cases as relevant to the issues being raised in this petition: *Jackson v. Indiana*, 406 U.S. 715 (1972); *Trueblood v. Washington State Dep't of Soc. & Health Servs.*, 822 F.3d 1037 (9th Cir. 2016); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101 (9th Cir. 2003); *Terry ex rel Terry v. Hill*, 232 F.Supp. 3d 934 (E.D. Ark. 2002); *Advocacy Center for Elderly & Disabled v. Louisiana Dept. of Health & Hosps.*, 731 F.Supp.2d 603 (E.D. La. 2010); *Disability Law Ctr. v. Utah*, 180 F. Supp.3d 998 (D. Utah 2016); *Craft v. Superior Court*, 44 Cal. Rptr. 3d 912, 919 (Cal. App. 2006); *State v. Hand*, 401 P.3d 367, 373 (Wash. App. 2017); *State v. Kidder*, 389 P.3d 664 (Wash. App. 2016).

Entered at the direction of the Court.

Clerk of the Appellate Courts

Meredith Montgomery

cc: Judge Swanson
ACRO

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